IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1239 OF 2005
IN
SUMMARY SUIT NO. 2256 OF 1984

Bhoruka Exports Private Limited ... PLAINTIFF

V/s.
Sawant Fisheries Pvt. Ltd. & Ors... DEFENDANTS

Mr. Jay Choksi i/b. Miss Kanchan Karangutkar for the plaintiff.
Mr. Anil Culla i/b. Ms. K.C. Nichani for the defendants.

CORAM : ANOOP V. MOHTA, J.
DATED : 17th March, 2006

P.C.

. Heard.

2. Considering the averments made in the affidavit in support of this Notice of Motion, I am inclined to restore the Summary Suit which was dismissed on 12th September, 2003.

3. Admittedly, there is delay of 557 days in taking out of this Notice of Motion. The learned Counsel appearing for the defendants orally opposed the said Notice of Motion. In the present case the learned Counsel for the plaintiff has strongly relied on **AIR 1981 Supreme Court 1400, (Rafiq and another V/s. Munshilal and another)** whereby the Apex Court

has observed that party should not suffer because of the advocate or their clerks' default.

4. In the present case the suit was listed for hearing on 12th September, 2003 under the caption for hearing. Considering the averments in Para 5, it appears that the name of the advocate for the plaintiff who had left the said chamber long back was shown in the list and that resulted into not keeping track of the above suit. The matter was dismissed on 12th September, 2000.

5. Thereafter, no one else could keep track of the above suit. The plaintiff when contacted the said advocate on telephone and enquired about the progress of the above suit, it was informed that he had left the said office long back and the papers were lying in the said Chamber and not with him.

6. In this back-ground, when enquired again the plaintiff came to know about the order of dismissal. On 19th March, 2005 the plaintiff applied for the certified copy. The certified copy was obtained on 11th April, 2005 and present Notice of Motion therefore preferred on 20th April, 2005.

7. In view of this, I see there is no reason that the plaintiff should suffer for above defaults. However, the order of restoration is subject to payment of cost of Rs. 2000/- to be paid within one week. Notice of Motion is accordingly disposed of in terms of prayer clauses (a) & (b) with no order as to costs.

[ANOOP V. MOHTA, J.]